# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Brandon Huckeby, : Civil Action No.: 5:15-cv-615

Plaintiff,

v.

USAA Savings Bank, : COMPLAINT

Defendant.

:

For this Complaint, Plaintiff, Brandon Huckeby, by undersigned counsel, states as follows:

#### **JURISDICTION**

- 1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").
- 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

#### **PARTIES**

- 3. Plaintiff, Brandon Huckeby ("Plaintiff"), is an adult individual residing in Saint Joseph, Missouri, and is a "person" as defined by 47 U.S.C. § 153(39).
- 4. Defendant USAA Savings Bank ("USAA"), is a Texas business entity with an address of 9800 Fredericksburg Road, San Antonio, Texas 78288, and is a "person" as defined by 47 U.S.C. § 153(39).

#### **FACTS**

- 5. Within the last four years, USAA placed calls to Plaintiff's cellular telephone, number 414-xxx-8099, using an automatic telephone dialing system ("ATDS") and/or using an artificial or prerecorded voice.
- 6. When Plaintiff answered calls from USAA, he heard a prerecorded message stating that the call was from USAA.
- 7. On April 21, 2015, Plaintiff mailed a letter to USAA. The letter instructed USAA to cease all calls to Plaintiff's cellular telephone.
  - 8. Nevertheless, USAA continued to harass Plaintiff with automated calls.

## <u>COUNT I</u> <u>VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.</u>

- 9. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
- 10. At all times mentioned herein, Defendant called Plaintiff on his cellular telephone using an ATDS and/or using a prerecorded or artificial voice.
- 11. Defendant placed automated calls to Plaintiff's cellular telephone despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).
- 12. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 13. Upon information and belief, Defendant's telephone system has the capacity to store numbers in a random and sequential manner.
  - 14. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call

made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

15. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

- 1. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C); and
- 2. Such other and further relief that the Court may deem just and proper.

## TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: July 28, 2015

Respectfully submitted,

By: \_\_/s/ Sergei Lemberg\_\_\_\_\_

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